

FCC MAIL SECTION

MAR 2 2 34 PM '93

Before the
Federal Communications Commission
Washington, D.C. 20554

Channel No.

City	Present	Proposed
Glenwood Springs.		
Colorado	256C3	224A, 256C3

DISPATCHED BY MM Docket No. 93-34 ✓

In the Matter of

Amendment of Section 73.202(b). RM-8100
Table of Allotments.
FM Broadcast Stations.
(Glenwood Springs, Colorado)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 8, 1993; Released: March 2, 1993

Comment Date: April 22, 1993

Reply Comment Date: May 7, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Gardiner Broadcast Partners, Ltd. ("petitioner") seeking the allotment of Channel 224A to Glenwood Springs, Colorado, as that community's second local FM service. Petitioner states its intention to apply for Channel 224A if it is allotted to Glenwood Springs.

2. We believe the public interest would be served by proposing the allotment of Channel 224A to Glenwood Springs since it could provide a second local FM service to the community. Channel 224A can be allotted to Glenwood Springs consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules¹ without the imposition of a site restriction.^{2,3}

3. We believe the proposal warrants consideration since it could provide Glenwood Springs with an additional local aural transmission service. Accordingly, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Glenwood Springs, Colorado, as follows:

4. IT IS ORDERED. That the Secretary shall send a copy of this *Notice of Proposed Rule Making* by Certified Mail, Return Receipt Requested, to the licensee of Station KMTS(FM), as follows: Colorado West Broadcasting, Inc., 1322-1/2 Grand Avenue, Glenwood Springs, CO 81601.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before April 22, 1993, and reply comments on or before May 7, 1993, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

David M. Silverman, Esq.
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution

¹ Coordinates used for Channel 224A at Glenwood Springs are 39-32-36 and 107-19-18.

² We note that this proposal conflicts with the presently licensed operation of Station KMTS(FM) on Channel 224A at Glenwood Springs. Since Station KMTS(FM) was modified to specify operation on Channel 256C2 (and subsequently downgraded to Channel 256C3) for which a construction permit has been issued (File No. BPH-900906JE), See *Memorandum Opinion and Order*, MM Docket No. 87-174, 3 FCC Rcd 5560 (1988), we have determined that issuance of this *Notice of Proposed Rule Making* is appropriate at this time. However, we may withhold final action in this matter until Station KMTS is

granted a license to operate on Channel 256C3 at Glenwood Springs. We will serve a copy of this *Notice of Proposed Rule Making* on Colorado West Broadcasting, Inc., licensee of Station KMTS(FM).

³ Petitioner requested a specific site. However, the Commission does not generally afford protection for a prospective applicant's desired transmitter site where the allotment will be made available for application by all interested parties, since at the allotment level we do not require the sort of detailed technical antenna site showing required of an applicant, and petitioner has no guarantee that it will eventually become the permittee. See *Stuart and Boone, Iowa*, 5 FCC Rcd 4537 (1990).

of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.